

EXHIBIT 5

Tuesday, May 21, 2024 at 16:27:42 Eastern Daylight Time

Subject: Re: Jonathan R. - Privilege Log
Date: Tuesday, May 21, 2024 at 4:12:12 PM Eastern Daylight Time
From: Laura Welikson
To: Philip Peisch, Julia Tebor, Trevor Rhodes, Marcia Lowry, Alex Meade, Rich Walters, John Mazezka
CC: Caroline Brown, Steven R. Compton, Julia Siegenberg, Rebecca Wolfe
Attachments: image001.jpg, image002.png, image003.jpg, image004.png, image005.png, image006.png, image007.png, image008.png, image009.jpg, image010.png, image011.png, image012.png, image013.png, image014.png

Phil,

Plaintiffs' position is that DPP does not apply in this case at all because DPP is not applicable where, as here, Plaintiffs' cause of action is directed at the government's intent. And even if DPP were applicable, the equities in this case favor disclosure. Finally, Plaintiffs contend that the justifications Defendants have put forth for asserting DPP are insufficiently detailed and specific to satisfy their burden of showing that the information is subject to the privilege.

Given that Plaintiffs do not think the privilege applies in this case, Plaintiffs do not believe a compromise can be reached and plan to move forward with their motion.

Kind regards,

Laura Welikson
Staff Attorney
[A Better Childhood](https://www.abetterchildhood.org)
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From: Philip Peisch <Ppeisch@brownandpeisch.com>

Date: Tuesday, May 21, 2024 at 11:59 AM

To: Julia Tebor <jtebor@abetterchildhood.org>, Trevor Rhodes

<trhodes@brownandpeisch.com>, Marcia Lowry <mlowry@abetterchildhood.org>, Alex Meade <ameade@shafferlaw.net>, Rich Walters <rwalters@shafferlaw.net>, John Mazezka <jmazezka@drofwv.org>, Laura Welikson <lwelikson@abetterchildhood.org>

Cc: Caroline Brown <Cbrown@brownandpeisch.com>, "Steven R. Compton"

<steven.r.compton@wvago.gov>, Julia Siegenberg <jsiegenberg@brownandpeisch.com>, Rebecca Wolfe <rwolfe@brownandpeisch.com>

Subject: RE: Jonathan R. - Privilege Log

Counsel – Defendants would like to understand Plaintiffs' position to see if compromise is possible:

- For the documents on the privilege logs, are Plaintiffs taking the position that DPP does not apply at all to any documents under any circumstances in this case? Or is Plaintiffs' position that DPP may apply to some documents, but some documents withheld and listed the privilege do not meet the DPP standard? If Plaintiffs are taking the latter position, Defendants request that Plaintiffs send us a list of which documents withheld based on DPP that Plaintiffs are questioning.
- For the Samples deposition, are Plaintiffs taking the position that DPP does not apply to any information he may testify to? Or is Plaintiffs' position that DPP may apply to some information, but that some of Defendants' counsel's specific objections were not supported by DPP? If the latter, Defendants request that Plaintiffs let us know which objections they are challenging and which objections they are not challenging.

Thank you.

Phil

PHILIP J. PEISCH

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From: Julia Tebor <jtebor@abetterchildhood.org>

Sent: Monday, May 20, 2024 4:05 PM

To: Trevor Rhodes <trhodes@brownandpeisch.com>; Marcia Lowry <mlowry@abetterchildhood.org>; Alex Meade <ameade@shafferlaw.net>; Rich Walters <rwalters@shafferlaw.net>; John Mazezka <jmazezka@drowfv.org>; Laura Welikson <lwelikson@abetterchildhood.org>
Cc: Philip Peisch <Ppeisch@brownandpeisch.com>; Caroline Brown <Cbrown@brownandpeisch.com>; Steven R. Compton <steven.r.compton@wvago.gov>; Julia Siegenberg <jsiegenberg@brownandpeisch.com>; Rebecca Wolfe <rwolfe@brownandpeisch.com>
Subject: Re: Jonathan R. - Privilege Log

Counsel,

We are in receipt of Defendants' privilege logs of emails withheld of the Governor's staff as well as Defendants' privilege log of DoHS employees' emails withheld on the basis of deliberative process privilege. As discussed previously, Plaintiffs do not agree that deliberative process privilege applies in this case. We intend to move to compel both on the discovery to which Defendants objected at the deposition of Jeremiah Samples as well as with respect to the documents withheld pursuant to deliberative process privilege on both privilege logs. We understand that Defendants will object to this motion.

Thanks,

Julia Tebor

Supervising Attorney

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From: Trevor Rhodes <trhodes@brownandpeisch.com>

Date: Monday, May 13, 2024 at 3:42 PM

To: Julia Tebor <jtebor@abetterchildhood.org>, Marcia Lowry <mlowry@abetterchildhood.org>, Alex Meade <ameade@shafferlaw.net>, Lindsay Gus <lgus@abetterchildhood.org>, Rich Walters <rwalters@shafferlaw.net>, John Mazezka <jmazezka@drofwv.org>, Laura Welikson <lwelikson@abetterchildhood.org>
Cc: Philip Peisch <ppeisch@brownandpeisch.com>, Caroline Brown <cbrown@brownandpeisch.com>, "Steven R. Compton" <steven.r.compton@wvago.gov>, Julia Siegenberg <jsiegenberg@brownandpeisch.com>, Rebecca Wolfe <rwolfe@brownandpeisch.com>
Subject: RE: Jonathan R. - Privilege Log

Counsel:

Yes, the privilege log made available to Plaintiffs' counsel on 5/09/2024 pertains solely to the ESI of the Governor's staff.

Thank you,

TREVOR J. RHODES

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From: Julia Tebor <jtebor@abetterchildhood.org>
Sent: Friday, May 10, 2024 12:57 PM
To: Trevor Rhodes <trhodes@brownandpeisch.com>; Marcia Lowry <mlowry@abetterchildhood.org>; Alex Meade <ameade@shafferlaw.net>; Lindsay Gus <lgus@abetterchildhood.org>; Rich Walters <rwalters@shafferlaw.net>; John Mazezka <jmazezka@drofwv.org>; Laura Welikson <lwelikson@abetterchildhood.org>
Cc: Philip Peisch <ppeisch@brownandpeisch.com>; Caroline Brown <cbrown@brownandpeisch.com>; Steven R. Compton <steven.r.compton@wvago.gov>; Julia Siegenberg <jsiegenberg@brownandpeisch.com>; Rebecca Wolfe <rwolfe@brownandpeisch.com>
Subject: Re: Jonathan R. - Privilege Log

Counsel,

The produced privilege log appears to pertain solely to the emails of the Governor's staff. Is this correct?

Thanks,

Julia Tebor

Supervising Attorney

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From: Trevor Rhodes <trhodes@brownandpeisch.com>

Date: Thursday, May 9, 2024 at 9:55 AM

To: Julia Tebor <jtebor@abetterchildhood.org>, Marcia Lowry <m_lowry@abetterchildhood.org>, Alex Meade <ameade@shafferlaw.net>, Lindsay Gus <lgus@abetterchildhood.org>, Rich Walters <rwalters@shafferlaw.net>, John Mazezka <jmazezka@drofwv.org>, Laura Welikson <lwelikson@abetterchildhood.org>

Cc: Philip Peisch <Ppeisch@brownandpeisch.com>, Caroline Brown <Cbrown@brownandpeisch.com>, "Steven R. Compton" <steven.r.compton@wvago.gov>, Julia Siegenberg <jsiegenberg@brownandpeisch.com>, Rebecca Wolfe <rwolfe@brownandpeisch.com>

Subject: Jonathan R. - Privilege Log

Counsel:

Please use this link to download an update to Defendants' privilege log:

https://transfer.cdslegal.com/public/folder/raawlocnaek_n16qeyajzw/raawlocnaek_n16qeyajzw

This link will expire on May 23, 2024. I will send the password by separate email.

Thank you,

TREVOR J. RHODES

C: 601.497.2779

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